IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1718 OF 2004

Rita Shailesh Vyas,)
Adult, Indian Inhabitant, aged)
36 years, Occ.: Housewife)
residing at B-23, Natvarlal)
Ganatra Chawl, Road No.3,)
Irani Wadi, Kandivli (West),)
Mumbai.).....Petitioner

Versus

1. State of Maharashtra)

2. The Commissioner of Police)
Greater Mumbai.)

3. The Additional Commissioner)
of Police, North, Thakur)
Complex, Kandivli (West))
Mumbai.)

4. The Deputy Commissioner)
of Police, North Zone,)
Borivli, Mumbai.)

5. The Senior Inpsector of)
Police, Kandivli (West))
Police Station, Kandivli)
(West), Mumbai.)

6. Mr.Kadlak,)
Inspector of Police)
Kandivli (West) Police)
Station, Mumbai.)

7. Mr.Padval)
Inspector of Police,)
Kandivli (West) Police)
Station, Mumbai.)....Respondents

Mr.S.V.Marwadi for Petitioner
Mr.B.H.Mehta, APP for State
Mr.H.H.Pimpale with Ms.Trupti Puranik for Municipal

Corproation.

CORAM : R.M.S.KHANDEPARKAR &
P.V.KAKADE, JJ.
DATE : 25th AUGUST, 2005

ORAL JUDGMENT : (Per Kakade, J.)

1. By the present Petition the Petitioner is seeking the Order of transfer of the investigation in C.R.No.64 of 2004 lodged with Kandivli (West) Police Station to DCB CID, Crowford Market, Mumbai on the ground that the investigation has been carried out not only in haphazard manner, but to hush-up the crime by suppressing the facts and destroying the material pieces of evidence as well as with the intention to protect the accused contrary to the provisions of law.

2. It is the case of the Petitioner that she was married to Shailesh Vyas (since deceased) in the year 1982 and was staying at her matrimonial home at Room

No.B-23, Natvarlal Ganatra Chawl, Road No.3, Irani Wadi, Kandivli (West), Mumbai. They had three children i.e. two sons and one daughter. The residential premises is in the old chawl admeasuring about 200 sq. ft. and they are tenants in the said room and were paying rent. Deceased Shailesh was employed in a private firm with a Stock Brokers. He suffered from asthma as well as heart ailment and had suffered heart attack in the past. The plot of land on which the said chawl was standing in which they were residing, was taken for development by a builder Jitubhai Barot of Kalpana Development at Goregaon (West). During the course of development of the said land, in the year 1993, the Builder offered the premises on the basis of ownership to the tenants including the petitioner's husband in new building to be constructed thereof and agreement was entered into with the petitioner's husband for alternate accommodation. The Petitioner's husband, as he was heart patient as well as suffering from Asthma, requested to the builder that the alternate accommodation in the new building, which would be given to him, be given on the ground floor so that he should not suffer, however, the builder refused to give the flat on the ground floor in the new building and refused to accept the request, which aspect

gave way to the dispute between the parties. The Petitioner alleged that the builder demolished W/C of the petitioner and all adjacent premises in the old chawl to pressurise the Petitioner. The builder also threatened to kill the Petitioner's husband because he did not agree to shift in new building. The site Supervisor Ravi (accused) employed by the builder was visiting the Petitioner's husband everyday under the pretext of supervision and threatened to kill the Petitioner's husband and throw his family on street.

. On 28th February 2004 the Petitioner's husband was ill and was at home, at 5.00 p.m. the deceased Shailesh was called by Security Guard saying that Supervisor Ravi had called him, he did not go and then said Ravi came to the premises. The builder came to the Petitioner's residence with Watchmen (1) Ranbir Ramjanamor, (2) Niranjan and (3) Bela and called her husband outside the room and threatened and abused her husband and started beating him up with fists and pushed him on wall and dragged him along the wall to ground by hitting and banging his head on walls. The petitioner and her daughter tried to intervene, however, said Ravi while abusing, assaulting and threatening to kill

deceased Shailesh, continued to gave blows on chest, abdomen, head and then banged him on the wall and then dragged him on the floor. After Shailesh fell on the floor outside the said room on the tiles then Ravi banged his head on the edge of a washing stone embedded and fixed on the floor. Due to the assault, Shailesh was grievously, seriously hurt on front and backside of his head and became unconscious. He was taken to Private Medical Practitioner where he was declared dead. According to the Petitioner, said Ravi, Supervisor of Jitubhai Barot, realising what he had done, escaped from the scene. The matter was reported to the Police. The Police Officers i.e. Respondent Nos.6 and 7 came on the scene. Panchanama was made and the Petitioner was taken to the Police Station and her statement was recorded and dead body of her husband was taken to Bhagwati Hospital for post mortem. The Petitioner lodged a complaint to Kandivli Police Station late in the evening, but Inspector on duty Mr.Kadlag, Respondent No.6, initially refused to take complaint against Ravi and Jitubhai Barot, the builder, and recorded FIR and statements falsely and wrongly. Investigation commenced. However, it is the case of the Petitioner that offender Ravi is a relative of Police Inspector and has influenced the

total investigation, which is falsely made in order to suppress the gravity of the act of Ravi and builder Jitubhai Barot. The matter was taken by the Petitioner, with the help of members of her community to certain advocate, through whom the letter was sent to the Commissioner of Police and other Police Officers, but in vein. Respondent no.5, it is alleged, did not investigate the complaint and refused to take any action against the Respondent Nos.6 and 7 for their act of suppressing the gravity of offence and hence finally the Petitioner was forced to file this Petition, when it was clear that investigating authority was not making any effort either to file the charge-sheet for the impugned offence, or investigate the said offence in truthful manner.

3. We have heard at length the learned advocate for petitioner and the learned A.P.P., who was all throughout assisted by the Investigating Officer. We have perused all the records placed before us in relation to the investigation carried out by the police. We have also in the presence of advocate for the Petitioner, the learned APP and the Investigating Officer, inspected the relevant original record

pertaining to the investigation made up till now with regard to this incident. In this regard we also must note that in support of the Respondents' case several affidavits are filed which are on record including that of Smt. Prachi S.Badhe, Asstt. Commissioner of Police, Borivli Division on instructions of Deputy Commissioner of Police, Zone-XI i.e. Respondent No.4 as well as three investigating officers involved in the said investigation i.e. Respondent Nos.5, 6 and 7.

. At this juncture we must note that Petition was filed on 24.8.2004 thereafter, as it appears from the record, First Charge-sheet came to be filed against the said accused Ravi on 11.10.2004 in the Court of Metropolitan Magistrate for offence punishable under Section 304(A) of Indian Penal Code. Certain facts were brought to the notice of this court, to which we would like to refer at later stage, the permission was sought from this court to make application to the Court of Metropolitan Magistrate for further investigation under Section 173(8) of Cr.P.C., which was given and subsequent supplementary charge-sheet came to be filed on 24.3.2005 for offence punishable under Section 304 of Indian Penal Code. Inspite of these developments, we

were convinced that the investigation was not only made in haphazard manner, but was clearly riddled with several irregularities as well as acts of omission and commission on the part of several investigating officers, who handled the single case, and therefore, we thought it fit to proceed with the matter to probe in depth the veracity of the claim of the State to the effect that they had investigated the matter faithfully and honestly in order to bring out the truth.

4. The FIR filed by the Petitioner was lodged in the evening of 28.2.2004 i.e. the day of the incident. It was treated as an offence under Section 304(A) of the Indian Penal Code and thereby treating act of accused Ravi as causing death by doing rash or negligent act not amounting to culpable homicide. The offence was so treated on the basis of so-called version given by the Complainant-Petitioner herself in FIR to the effect that Ravi came near the deceased and pushed him, as a result of which the deceased lost balance and fell from left side on the ground and became unconscious, and thereafter the accused Ravi left. Therefore, the elements of lesser crime was attributed to accused Ravi. In support of this version the statements of few

witnesses were recorded including Ranjit Chandiga, Bhingariya and Smt.Bela Fernandes, significantly both the watch persons employed by the builder in question. Remaining witnesses were not the eye witnesses to the incident. When this material was brought to our notice, we also thought it fit to peruse the post mortem report, which showed vide column 17 thereof that there was abrasion over left side forehead of the deceased. The post mortem report was totally silent in respect of admitted injury on back side of the head of the deceased, which however, was revealed by inquest panchnama which showed that there was large bulge on left side of back of the head, besides, swelling on left side forehead above eyebrow and some abrasion on skin. Now the injuries referred to in the post mortem as well as inquest panchnama were totally silent in respect of internal injuries, which should have been revealed in the course of post mortem examination, which in fact was revealed by Histopathology reports showing that there was extensive haemorrhage from the spleen of the deceased. In his affidavit Senior Inspector Ghag had audacity to state that the Petitioner neither in a complaint nor in the present petition stated anything regarding assault on the abdomen of the deceased,

however, in view of Histopathology report disclosing damage to the spleen, they wanted to make further investigation. Now this statement in the affidavit of Senior Inspector Ghag is categorically untrue because the Petitioner, in her Petition, has clearly stated that the said accused Ravi, abused, threatened and assaulted the deceased with blows on chest, abdomen, head and then banged him on the wall (para 12 of the Petition). Apart from the fact that the Histopathology report was received as late as in November, 2004 for the reasons best known to the investigating machinery, there was apparent haste on the part of investigating machinery to file the charge-sheet for lesser offence under Section 304(A) of I.P.C. immediately after the present Petition was filed before us, trying to suppress the Histopathological findings. This aspect in our considered view, is deliberate suppression of the vital piece of evidence not only in order to shield the culprit but also to dilute the gravity of the offence committed. It is also apparent that the investigating officers had to bring the Histopathology report on record when we insisted the entire original record to be produced for our inspection, then and then only Senior Inspector Mr.Ghag’s statement came to the effect that in

view of the fact that Histopathological findings they wanted to reinvestigate the matter, which they appear to have been done and have filed a supplementary charge-sheet under Section 304 of I.P.C. in order to save their skins. Even, prima facie, perusal of the record of subsequent and supplementary charge-sheet we are not satisfied that the investigation is made in honest and faithful manner because the witnesses who were examined earlier are the same witnesses and no effort is seen to have been made to make in-depth investigation.

. This aspect also supports the allegations made by the Petitioner that her FIR was manipulated so as to dilute the gravity of the offence, apparently in order to shield the culprit. This view is supported by the circumstances revealed from the record, including the histopathological report, variance between the post mortem examination report and inquest panchnama, inter se, as well as viscera report. Moreover it is also seen to be very strange that the scene of incident was busy place and at the given time it was likely that there was quite a crowd around and still the investigation officers have found it convenient to rely on only two

eye witnesses and that too, the watchman and watchlady in the employment of accused persons.

5. We must note here that while we were not satisfied by obvious complacency on the part of as many as four investigation officers involved in this case, we thought it fit to call for original record. We must note here that none of the four investigation officers were in position to answer the query of the Court as to the duration of their respective period of investigation. We have also perused the Station Diary of Kandivli Police Station. It is incumbent upon the Investigation Officer to make entry in the Station Diary as well as Case Diary to make note as to when particular officers had handed over the investigation in the given case, which has not been done in the present case. Finally the court had given time to file their affidavits in that regard, which are on record. Perusal of the affidavits of the concerned officers reveal miserable state of discharge of their duties in respect of investigation in this case, and therefore, who can blame the Petitioner, if it is submitted on her behalf that it was not an act of omission but an act of commission on their part to suppress the truth and to

shield the real culprit. Be as it may, the fact remains that the investigation is not at all satisfactory and therefore, we have no hesitation to note that whatever investigation is made till today is made not with intention to find out the truth, but obviously to dilute the gravity of the act of the present accused as well as his accomplice, if any, and thus we are inclined to take away the investigation from the concerned officers and hand it over to the DCB CID, Mumbai for further investigation in to the matter.

6. The record shows that Senior Inspector Nandkumar Ghag, Asstt. Police Inspector Kadlag, Inspector of Police Ramdas Mhaskar and Police Sub-Inspector Ravindra Padwal were the investigating officers of the present case at various times, out of which P.S.I. Padwal appears to have handled the investigation only for three days, whereas the other officers appear to have played active role in the entire investigation. We must further note that they are found to be incapable of handling faithful investigation in serious crimes and their superiors would be well advised not to hand over any investigation in serious crime to them atleast for next two years.

. We are inclined to hand over the entire case for further investigation to DCB, CID, Mumbai, who shall do the needful. At this juncture it must be noted that the Asst. Police Inspector Kadlag, as is revealed from his affidavit, at present is attached to Unit-11, S.B.-1, CID Mumbai. As a matter of abundant precaution we direct that he shall not be allowed to handle the matter directly or indirectly while CID Mumbai investigates the matter under the order of this Court.

7. With these directions the Rule is made absolute. The Petition is allowed in terms of prayer clause (a). The Incharge of DCB CID Mumbai is hereby directed to make further investigation in the matter so as to bring the real culprits to books, for which purpose the Petitioner shall give full cooperation to the concerned authorities. The Kandivli Police Authorities are hereby directed to hand over entire record pertaining to the said crime to the authorised officer of DCB CID Mumbai for the purpose immediately. The office of this Court shall transmit the original files of C.R.No.66 of 2004 of Kandivli Police Station to the concerned Police Officer for the purpose of transmission thereof to the

authorised Officer of DCB CID Mumbai. Till the investigation is completed in accordance with the provisions of law by DCB CID Mumbai, the proceeding already initiated on account of filing of charge-sheet in the present case shall remain suspended.

8. Copy of this order be sent to the Commissioner of Police, Mumbai as well as Deputy Commissioner of Police, Zone-11 i.e. Respondent no.4 herein for necessary compliance in view of the observations made hereinabove.

(R.M.S.Khandeparkar,J.)

(P.V.Kakade,J.)